

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Wireless Emergency Alerts)	PS Docket No. 15-91
)	
Amendments to Part 11 of the Commission's Rules)	PS Docket No. 15-94
Regarding the Emergency Alert System)	

PETITION FOR RECONSIDERATION OF CTIA

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To: The Commission

PETITION FOR RECONSIDERATION

I. INTRODUCTION AND SUMMARY.

CTIA,¹ pursuant to Section 1.429 of the Federal Communications Commission's ("Commission") rules,² respectfully submits this Petition for Reconsideration or, in the alternative, clarification of the Commission's *Order* in the above-captioned proceeding pertaining to the voluntary Wireless Emergency Alert ("WEA") system.³ Specifically, CTIA asks the Commission to take the following steps:

¹ CTIA® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² 47 C.F.R. § 1.429.

³ *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91 and 15-94, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-127 (rel. Sept. 29, 2016) ("*Order*").

- Defer mandating implementation of embedded references until after feasibility testing and standards efforts are completed;
- Clarify the definition of “clickable” links;
- Clarify that support for embedded references, to the extent required, need only be supported by new devices, and not older, legacy devices; and
- Clarify that, because they are inextricably connected, the compliance date for supporting Spanish-language Alert Messages will be concurrent with the compliance date for increasing the character-count of Message Alerts.

The wireless industry is committed to enhancing public safety through voluntary participation in the WEA system. CTIA and the wireless industry have supported the Commission’s efforts to enhance the WEA system in ways that are feasible and effective. To continue the success of the program, the Commission should reconsider or clarify these few newly-enacted requirements in a manner that ensures the continued feasibility of the voluntary WEA system.

II. IMPLEMENTATION OF EMBEDDED REFERENCES SHOULD BE DEFERRED UNTIL FEASIBILITY TESTING IS COMPLETED AND THE REQUIREMENTS FOR COMPLIANCE ARE CLARIFIED.

The *Order* requires Participating Commercial Mobile Service (“CMS”) Providers to support the transmission of embedded Uniform Resource Locators (“URLs”) and phone numbers in WEA Alert Messages.⁴ Unfortunately, while the Commission will permit CMS Providers to test embedded references in Alert Messages in a sample of their network area or subscriber base,⁵ the *Order* simultaneously mandates actual implementation on November 1, 2017 (one year after Federal Register publication of the new WEA rules).⁶ Mandating compliance prior to

⁴ *Order* ¶ 29.

⁵ *Id.* ¶ 32.

⁶ *Id.* ¶ 29.

completion of feasibility testing, however, defeats the purpose of the testing. The new requirements create implementation challenges for wireless networks, mobile devices, and websites that will be the target of embedded URLs, threatening the reliability of each for all consumers. The record has demonstrated that compliance with embedded references for WEA Alert Messaging cannot be determined until standards are completed, followed by feasibility testing. Only then could a date for compliance be determined (and only if support of embedded references is demonstrated to be achievable). The Commission should allow for comprehensive feasibility testing to address these concerns and questions *before* mandating compliance. The current compliance deadline is unsupported in the record, making it arbitrary and capricious. Moreover, the Commission should clarify that support for embedded references is required only for new, not legacy, devices.

A. Mandating Compliance Before Comprehensive Feasibility Testing May Lead to Substantial Network Congestion.

While the *Order* rejects arguments that embedded references will increase network congestion,⁷ the Commission agrees that real-world experience is needed, and therefore permits CMS Providers to test embedded references in Alert Messages in a sample of their network area or subscriber base, prior to full implementation in November, 2017.⁸

CTIA strongly disagrees with the determination that network congestion will not be an issue for carriers, and notes that the Commission itself has cited no evidence to counter the industry arguments about network congestion. CMS Providers are in the best position to determine the effects that use of embedded references may have on their networks – and the

⁷ *Id.* ¶ 31.

⁸ *Id.* ¶ 32.

Commission should give deference to CMS operators as they are the only parties with actual experience in dealing with network traffic in response to such alerts. For example, testing may demonstrate that there may need to be limits on file sizes associated with embedded references to ensure that network congestion would occur. In addition, legacy wireless networks have significantly less aggregate bandwidth than LTE networks,⁹ limiting the ability for these systems to effectively manage large scale, simultaneous data access for embedded references. Simply requiring CMS support of embedded references by November 1, 2017, without significant, widespread testing, may indeed lead to substantial network congestion.

Moreover, there have been a number of incidences where widespread alerts have directly led to congestion and the consequent failure of websites – further underscoring the need to test the ability of alert originators and other affected parties to manage the volume of internet traffic that would be associated with the implementation of embedded references. The Commission entirely disregards this key aspect of informing the public. For example, a website designed to help victims of a cyberattack on a federal database containing personal records of employees crashed when too many employees tried to access it at the same time.¹⁰ The employees had received notifications, by e-mail and letter, directing them to the website.¹¹ The crash, which lasted for two hours, occurred despite the addition of server capacity in anticipation of the high

⁹ The majority of LTE networks have at least 5 MHz of bandwidth dedicated for base and mobile transmissions (10 MHz paired) and newer LTE deployments have 10 and 15 MHz of bandwidth in each direction (20 and 30 MHz paired). In contrast, the bandwidth of CDMA is 1.25 MHz (2.5 MHz paired), with GSM limited to 200 kHz (400 kHz paired).

¹⁰ Lisa Rein, *Web site to aid victims of federal cyberattack crashes due to high volume*, WASH. POST (June 11, 2015), <https://www.washingtonpost.com/news/federal-eye/wp/2015/06/11/web-site-to-aid-victims-of-federal-cyberattack-crashes-due-to-high-volume/>.

¹¹ *Id.*

traffic.¹² Similarly, the National Hurricane Center’s website crashed after the Center released an advisory as Hurricane Matthew charged towards Florida.¹³ The website became inaccessible to thousands for about two and a half hours at a pivotal moment.¹⁴ Likewise, Virginia’s state elections website crashed on the last day of voter registration in response to “get out the vote” campaigns. As a result, possibly “tens of thousands” of Virginians were affected as they tried to register.¹⁵ Anecdotal evidence of network congestion – including embedded URLs included in WEA messages during Hurricane Matthew in Florida (AlertFL.com) – supports the wireless industry’s concern about mandating CMS provider support for embedded references without adequate feasibility testing.

B. Testing, Prior To Mandating Compliance, Is Necessary To Determine The Feasibility Of Supporting Embedded References.

Given the public safety nature of WEA messaging, it is vitally important to be certain that these alerts are effectively delivered prior to mandating the use of embedded references. Testing will help the industry develop requirements for managing any increases in network volume from widespread alerts, while simultaneously allowing time to work with alert originators and other

¹² *Id.*

¹³ *National Hurricane Center website goes down as Matthew nears Florida*, FOX NEWS (Oct. 7, 2016), <http://www.foxnews.com/us/2016/10/07/national-hurricane-center-website-goes-down-as-matthew-nears-florida.html>.

¹⁴ *National Hurricane Center website went offline for more than 2 hours during Matthew*, CBS12 (Oct. 7, 2016), <https://www.washingtonpost.com/news/capital-weather-gang/wp/2016/10/07/hurricane-center-website-blacked-out-as-matthew-charged-towards-florida/>.

¹⁵ Rachel Weiner, *Federal judge says Virginians will get another day and a half to register*, WASH. POST (Oct. 21, 2016), https://www.washingtonpost.com/local/virginia-politics/federal-judge-says-virginians-will-get-another-day-and-a-half-to-register/2016/10/20/87db2916-96d9-11e6-bc79-af1cd3d2984b_story.html.

third parties that must provision resources (whether a website link or telephone number) to handle a large amount of traffic generated by embedded reference links. Testing also will allow CMS Providers to determine how mobile devices will behave when there is a clickable link. Each mobile device could potentially function in a different manner when the end user attempts to click on an embedded reference. The public expects that clickable links within a WEA message will work seamlessly when an emergency event occurs. Without extensive testing by all affected stakeholders in the WEA process, the Commission cannot be certain that embedded references will actually improve the dissemination of information to the public. Consumer confusion and frustration is a real and substantial risk, necessitating adequate testing prior to obligating CMS Provider support of embedded references.

C. The Compliance Deadline Has No Sound Basis In The Record.

The Commission's one-year compliance deadline is unsupported in the record, making it arbitrary and capricious and in violation of the Administrative Procedure Act.¹⁶ The Commission only states that it "believe[s] it is feasible for Participating CMS Providers to support embedded references within one year" but provides no basis for its belief.¹⁷ Without providing a meaningful basis for determining that a one-year compliance requirement is achievable, the Commission decision to adopt a one-year deadline is devoid of any "reasoned decision-making," rendering it arbitrary and capricious.¹⁸

¹⁶ See 5 U.S.C. § 706(2)(A) ("The reviewing court shall hold unlawful and set aside agency actions, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]")

¹⁷ Order ¶ 80.

¹⁸ *City of Kansas City v. Dep't of Hous. & Urban Dev.* 923 F.2d 188, 189 (D.C. Cir. 1991).

The courts have insisted that an agency “examine the relevant data and articulate a satisfactory explanation for its action.”¹⁹ In this instance, however, the only data that exists on the record with respect to an appropriate compliance deadline is utterly at odds with the FCC’s findings. CTIA, in fact, was the only commenter that provided evidence on the timing for a compliance deadline, and CTIA’s statement was that “[i]ndustry standards with a development process likely well *in excess of one year* would be necessary.”²⁰ Indeed, in adopting an arbitrary one-year deadline, the Commission ignored the complexities and difficulties of implementing embedded references, yet it recognized those same issues when it adopted later compliance deadlines for other components of the new WEA requirements. In addition, FEMA had informed the Commission that “standards would need to address how URLs would be handled” and “changes to handsets and/or operating systems would be required.”²¹ Therefore, the partner agency that actually disseminates alerts as well as the wireless industry whose members distribute alerts noted in the record that standards efforts would be necessary to implement embedded references into the WEA system – which the Commission stipulated for other compliance requirements would “require compliance thirty months from the date of the rules’ publication in the Federal Register.”²² While the Commission “took into consideration commenter’s feedback that we should take into account the time necessary to complete all

¹⁹ *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 US 29, 43 (1983).

²⁰ *See Ex Parte* Presentation of CTIA, PS Docket No. 15-91, at 2 (filed Sept. 29, 2016) (emphasis added).

²¹ *See Ex Parte* Presentation of the Federal Emergency Management Agency, PS Docket No. 15-91, at 2 (filed Sept. 29, 2016).

²² *Order* ¶ 79.

relevant updates to standards” when establishing a compliance deadline for supporting 360-character messages, it arbitrarily dismissed standards development for supporting embedded references.²³ In sum, aspirational desires of the Commission do not overcome the record – which clearly stated that a one-year deadline to support embedded references into the WEA system would be unworkable and infeasible.

D. “Clickable” Must Be Clearly Defined Prior To Requiring Compliance.

The *Order* requires CMS Providers to support “clickable” phone numbers in Alert Messages.²⁴ However, the Commission fails to define the term “clickable” and does not indicate whether the behavior it expects for “clickable” phone numbers is consistent with the actions it expects for CMS Providers to take for embedded references generally. While the Commission refers to “embedded references” throughout the *Order*, it mentions “clickable” only once and only in the context of supporting “clickable” phone numbers in Alert Messages.²⁵ Therefore, it is unclear what the Commission intends by “clickable” and whether it applies to URLs as well as phone numbers. CMS Providers will need to fully understand the actual regulatory requirement for both of these embedded references and will require standards efforts and software changes to activate and implement these capabilities in a consistent manner into the WEA. CTIA suggests that CMS Providers be permitted to work with the standards bodies to develop the best methodology for detecting an embedded reference and presenting an option to the user to open

²³ *Id.* ¶ 80 (stating, “We further expect that Participating CMS Providers will be interested in making this functionality available as quickly as possible in the best interest of their subscribers, including by implementing necessary changes to their software without waiting for the completion of industry standards.”)

²⁴ *Order* ¶ 36.

²⁵ *Id.*

the embedded link. This will allow CMS Providers and other affected stakeholders the opportunity to make certain that the implementation methodology for embedded references is effective and efficient.

E. Support for Embedded References Should Only Be Required for New Devices.

CTIA believes that support for embedded references can only be implemented in new devices, though the *Order* is silent on this point.²⁶ As the Commission is well aware, there are significant numbers of existing, legacy wireless devices in the marketplace that do not have the ability to support clickable links – not every subscriber utilizes a phone that is internet-capable or able to handle embedded references. The Commission should clarify that CMS Providers must only ensure that new, WEA-capable devices support embedded references.

III. THE COMMISSION SHOULD CLARIFY THAT SUPPORT FOR SPANISH-LANGUAGE ALERT MESSAGES WILL BE CONCURRENT WITH AN INCREASE IN MESSAGE ALERT LENGTH.

The Commission adopted a new Section 10.480²⁷ requiring Participating CMS Providers to support the transmission of Spanish-language Alert Messages.²⁸ CMS Providers are required to display Spanish-language WEA Alert Messages on WEA-capable mobile devices if subscribers specify Spanish as their preferred language.²⁹ While CMS Providers must support

²⁶ *Order* ¶ 29.

²⁷ 47 C.F.R. § 10.480.

²⁸ *Order* ¶ 40.

²⁹ *Id.*

Spanish-language Alert Messages within two years, they have thirty months to comply with the requirement to support 360-character messages.³⁰

CTIA seeks clarification, or alternatively reconsideration, of the differing compliance dates for Spanish-language alerts and the increase in message alert lengths. The Commission itself recognized that there is a need for more characters when translating from English to Spanish.³¹ Mandating CMS Providers to support Spanish-language alerts – prior to the implementation of the character increase from 90 to 360 characters – presents significant implementation issues. As identified in ATIS study of this issue, translating English-language Alert Messages into Spanish often will increase the number of characters contained in the message. As just one example, the following English message requires 78 characters: “Public Safety Warning This area is affected until 3:00pm EDT Evacuate Now NYPD.” The Spanish equivalent requires 97 characters: “Advertencia de seguridad pública Esta área es afectada hasta 3:00pm EDT Evacuación inmediata NYPD.” While increasing this limit to 360 characters will not eliminate the issue associated with translation (*i.e.*, the need for more characters to translate to another language), increasing the message length four-fold should greatly reduce the need for alert originators to extend messages up to the maximum. When an alert originator is restricted to a 90-character message length, it is much more likely to require all the characters to effectively communicate an alert to the public – therefore, it is important to allow the “headroom” associated with the 360-character message length prior to implementation of Spanish-language alerts.

³⁰ *Id.* ¶¶ 79, 81.

³¹ *Order* n. 64.

In addition, requiring separate compliance dates will necessitate duplicative testing phases for FEMA and other affected alert originators. Each modification to WEA Alert Messages will necessarily require testing by FEMA and others to determine if the new capabilities are fully incorporated and functioning. Separating Spanish-language alerts from the 360-character capability – and the attendant separate testing requirements – will burden alert originators with duplicative testing requirements that could be streamlined to a single testing phase if the two functions were concurrent.

CMS Providers anticipated that, because these two features are inextricably linked, the compliance dates would be concurrent. However, the *Order* mandates Spanish-language support six months prior to the increase in message alert length—a compliance deadline that presents significant implementation obstacles and is unnecessarily burdensome for alert originators. While standards already exist to support Spanish-language Alert Messages, the standards contemplated that there would be 360 characters available to handle translations from English to Spanish. Because the two requirements are inseparable, CTIA asks the Commission to clarify, or alternatively reconsider, that the compliance date for Spanish language support should be concurrent with the needed implementation of increased message lengths.

IV. CONCLUSION.

For the above stated reasons, the Commission should defer mandating a compliance date until after feasibility testing and standards are complete, clarify certain embedded reference requirements, and clarify that support for Spanish-language Alert Messages will be concurrent with an increase in Message Alert character-count.

Respectfully Submitted

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